

cc: HJ
ORIGINIAL
FILED IN THE
UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

JAN 10 2008
at 10 o'clock and 35 min. AM
SUE BEITIA, CLERK

UNITED STATES DISTRICT COURT
DISTRICT OF HAWAII

UNITED STATES OF AMERICA, Civil No. 07-00597 HG-LEK

Plaintiff, Case No. 1:02-CR-00341-HW-03

vs.

ROBERT R. MALDONADO, JR.

Defendant.

Amended Motion To Correct An Illegal Sentence

Pursuant To Federal Rule Civil Procedure Rule 15(a)

Now Comes; defendant Maldonado with this amended request
for the Honorable Court to Correct An Illegal Sentence via 28
U.S.C. §2255 on the following claims.

"CLAIM ONE"

Defendant Maldonado was denied effective counsel at trial,
sentencing and on direct appeal, as defined by The United
States Supreme Court's dicta and holding in Cite: Paul Glover
vs. United States, 148 L.Ed.2d 604 (2001).

Ineffective counsel failed to address on direct appeal
all Sentencing Guideline misapplications as this is the
exclusive avenue in which a court may inquire into these
claims.

An "EVIDENTUARY HEARING" is requested to expand the record on these sentencing guideline claims as defendant Maldonado does not have access to The Presentence Report and its point adjustments to properly address.

"NOTICE" The federal prison does not allow any prisoner to maintain the Presentence Report to enable defendant to properly address any sentencing guideline issue.

Will this court appoint counsel on this issue to protect defendant's due process rights?

"CLAIM TWO"

Defendant Maldonado was denied due process when the court accepted his guilty plea under Federal Rule Criminal Procedure 11(f) as follows:

"Case Of First Impression"

as this claim has never before been addressed as follows:

- 1) The drug amount pled too by defendant was unconstitutionally enhanced under 21 USC §841(b) (1) (A) (viii) after the court accepted Maldonado's guilty plea.

"JUDICIAL NOTICE"

Section §841(b) (1) (A) element under (viii) is 100 grams or more of methamphetamine its salts, isomers, and salts of its isomers or 1 kilogram or more of a mixture or substance

containing a detectable amount of methamphetamine.

However; Title 21 United States Code Section 841(a) (1) (B) (viii) would have been the proper statute for an indictment to be constitutional NOTE: criminal indictment is void ab initio as limned.

- 2) The court allowed the Presentence Report to depart upward defendant's sentence based on a different statute and its elements or facts not alleged in the indictment, after the guilty plea was accepted by all parties also used prior exempt convictions [not pled too] to enhance this sentence.
- 3) Defendant was not on actual notice of the actual sentence he would receive by pleading guilty as he was sandbagged [illegally enhanced] by the government.

"CLAIM THREE"

Pursuant to United States Sentencing Guideline Amendment #484 States: any mixture or substance must be separated to enable the court to determine the [actual] amount of useable drugs, before the court can determine a legal sentence.

- 1) Wherefore; the court must correct this federal sentence to reflect the proper sentence, based on Amendment #484 that was retroactive.

"CLAIM FOUR"

Defendant's request to the court for an order to his court appointed attorney to forthwith send any and all records to Maldonado, to enable defendant to present all claims on this 28 United States Code Section 2255 as defendant will file an amended petition via Federal Rule Civil Procedure 15 (c) (2) "Relation Back Theory" to protect his rights.

Wherefore; will this court hereby grant defendant's request and correct this illegal sentence as presented?

Signed, dated and mailed
under oath and affidavit
by placing into the Prison
Mail Box Rule January 4th, 2008

Respectfully Submitted;


Robert R. Maldonado, Jr.

37601-048

USP Victorville

Box 5500

Adelanto, California 92301